3375.

SUPREME COURT OF THE UNITED STATES.

No. 141.

JAMES C. CONVERSE, ADMINISTRATOR OF PHILIP GREELY, JR., DECEASED, PLAINTIFF IN ERROR,

vs.

BENJAMIN BURGESS, NATHAN B. GIBBS AND BENJAMIN F. BURGESS, COPARTNERS UNDER THE FIRM OF BENJAMIN BURGESS & SON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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GIDEON, printer.

Writ of Error.

UNITED STATES, *ss:*

[SEAL.] The President of the United States, to the judges of the circuit court, holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Benjamin Burgess, Nathan B. Gibbs and Benjamin F. Burgess, plaintiffs, and James C. Converse, administrator, defendant, in a plea of the case a manifest error has intervened, to the great damage of the said Converse, administrator, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this fourteenth day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

H. W. FULLER, *Clerk.*

Allowed by

B. R. CURTIS,
Associate Jus. S. C. U. S.

CIR. C. U. S. MASS. DIST.

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, pursuant to the directions herein contained, do hereby make return of this writ, and annex hereto and return herewith a true copy of the record and of all proceedings in the cause or suit, Benjamin Burgess and als vs. James C. Converse, adm'r, wherein judgment was rendered in the said circuit court; and I annex, also, the citation served and returned into this office in said case, and certify that a copy of the within suit was lodged in the clerk's office, for the adverse party, on the day of the date of said writ.

In witness whereof, I have hereunto set my hand and the seal of said circuit court, this twenty-seventh day of November, A. D. 1855.

[SEAL.] H. W. FULLER, *Clerk.*

Citation.

UNITED STATES OF AMERICA,
Mass. dist., ss:

BENJAMIN BURGESS and als.
vs.
JAMES C. CONVERSE, adm'r.

To Benjamin Burgess, Nathan B. Gibbs and Benjamin F. Burgess, of Boston, in said district, merchants and copartners under the style of Benj. Burgess & Son, greeting:

Whereas, the circuit court of the United States for the first circuit and district of Massachusetts, on the first day of October, A. D. 1855, rendered a final judgment in a certain cause then depending therein, between you as plaintiffs, and James C. Converse, administrator of the goods and estate of Philip Greely, jr., deceased; on which said judgment the said Converse, adm'r as aforesaid, hath caused a writ of error to be sued out from the said circuit court of the United States, returnable at the next term of the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first Monday of December next; and the said Converse, adm'r, hath filed in said circuit court security to prosecute his said suit, as required by law, and thereupon the said writ hath been duly allowed, the court deeming it reasonable to allow the same:

Now, therefore, you are hereby notified of the issuing and allowance of the said writ of error, and are hereby cited to appear, if you see cause, at the said Supreme Court of the United States, next to be holden at Washington aforesaid, on the first Monday of December next, to make answer thereto.

Given under my hand and seal, this fourteenth day of November, A. D. 1855.

B. R. CURTIS, [L. S.]
Asso. Jus. S. C. U. S.

UNITED STATES OF AMERICA,
Mass. dist., ss:

BOSTON, *November* 15, 1855.

I certify that I have notified the within named Benjamin Burgess, Gibbs, and Benj. F. Burgess, by giving in hand to Gibbs and Benjamin F. Burgess, and by leaving at the last and usual place of abode of Benjamin Burgess, severally, a true and attested copy hereof.

WATSON FREEMAN,
U. S. Marshal.
By F. WARREN, *Dep.*

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Trav., $6 06
3 copies, 3 00

$9 06

UNITED STATES OF AMERICA,
Massachusetts district.

May term, 1855.

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable Benjamin R. Curtis, associate justice, and the honorable Peleg Sprague, district judge.

Benjamin Burgess, Nathan B. Gibbs and Benjamin F. Burgess, all residents of Boston, within said district of Massachusetts, merchants, copartners under the style of Benj. Burgess & Son, vs. James C. Converse, a citizen of the commonwealth of Massachusetts and resident in Boston, in the district of Massachusetts, administrator of the goods, effects and credits, that were of Philip Greeley, junior, deceased, late a citizen of said Massachusetts, and resident in said Boston, and late collector of the customs for the port of Boston, in said district; in a plea of the case, for that heretofore, to wit, on the twenty-ninth day of June, in the year eighteen hundred and fifty, the said Greeley in his lifetime being indebted to the plaintiffs in the sum of three thousand dollars, demanded and received of the plaintiffs by the said Greeley, under color of a law of the United Stares for the collection of duties, (and by the plaintiffs paid under protest,) and before that time had and received by the said Greeley to the use of the plaintiffs, promised them to pay the same when he should be thereto afterwards requested; yet neither he, the said Greely in his lifetime, nor his said administrator, has paid the same, or any part thereof, though often requested, to the damage of the said plaintiffs, as they say, the sum of three thousand five hundred dollars. This action was entered at the October term, 1854, of this court, when and where the parties appeared by their respective attorneys, and thence the same was continued until this present term. And now the said defendant comes, &c., when, &c., and says that the said Greely, in his lifetime, nor the said defendant since, ever promised, in manner and form as the plaintiffs have declared, and of this he puts himself upon trial, by his attorney, B. F. Hallett, U. S. attorney; and the plaintiffs do the like by their attorney, M. Andros.

Issue being thus joined, the cause, after a full hearing, is committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein upon oath, and say, that the jury find that said Philip Greeley, jr., in his lifetime, did promise the plaintiffs in manner and form as they in their writ aforesaid have alleged, and assess damages in the sum of twenty-one hundred and twenty-seven dollars and sixty-eight cents.

JOEL NILES, *Foreman.*

It is therefore considered by the court, that the said Benjamin Burgess, Nathan B. Gibbs and Benjamin F. Burgess, recover against the said James C. Converse, administrator as aforesaid, the sum of twenty-one hundred and twenty-seven dollars and sixty-eight cents, and costs of suit, taxed at eighty three dollars and fifty-seven cents.

Upon the trial of the above entitled cause, after the evidence was closed on both sides and before the issue was submitted to the jury, the defendant filed his bill of exceptions, which was allowed by the court, and is in the words and figures following, to wit:

Be it remembered, that at a term of the circuit court of the United States for the first circuit, holden at Boston, within and for the district of Massachusetts, on the fifteenth day of May, in the year eighteen hundred and fifty-five, came Benjamin Burgess, Nathan B. Gibbs and Benjamin F. Burgess, of Boston, in said district, merchants and co-partners, and by an action of assumpsit for money had and received by the defendants, intestate, under color of a law of the United States for the collection of duties, and by the plaintiffs paid under protest, declared against said J. C. Converse, administrator of the said Philip Greeley, junior, deceased, late of said Boston, and collector of the customs for the port of Boston, as by the writ and declaration will appear, to which the defendant pleaded the general issue, which was joined; and thereupon came on for trial at the said circuit court, at the said May term, 1855, before a jury empannelled for that purpose.

And the said plaintiffs, then and there to maintain and prove the issue on their part, introduced documents and proof to show that, on the 26th of April, eighteen hundred and fifty, the plaintiffs imported into the port of Boston, from Remedios, in the island of Cuba, 165 hogsheads and 1 barrel of Muscovado sugar, seventy boxes of white sugars, and 51 barrels 20 tierces of honey, invoiced of the value of $8,968 43; to which value declaration was made on entry as "the actual cost," in the form of "owner's oath," in case where goods, &c., have been actually purchased, as follows: "I, B. F. Burgess, do solemnly and truly swear, that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, &c., of all charges thereon, including charges of purchasing cargoes, bleaching, dying, pressing, finishing, putting up and packing, and other discount, drawback or bounty, but such as has been actually allowed on the same."

The public appraisers at the custom-house advanced the above valuation in the invoice to $9,794 $\frac{30}{100}$, at the time and place of exportation. Their report to the collector is dated May 14, 1850.

From this decision the importers appealed, and two merchants were appointed on their request to make a re-appraisement, and were duly sworn, May 21, 1850, and made their return to the collector, substituting "the principal markets of Cuba" for the place of exportation, as follows:

"BOSTON, *June* 4, 1850.

"SIR: We have examined an invoice of merchandise (sugar) imported by B. Burgess & Son, in the Eliza Burgess, from Remedios, valued in the invoice at $8,968 $\frac{48}{100}$, but which, we are of opinion, could not have been purchased at the time of exportation for less than $9,794 $\frac{80}{100}$, at the principal markets of Cuba. In conformity, therefore, with the provisions of the 16th and 17th sec. of the Tariff act, approved Aug. 30, 1842, we do appraise the said sugar as follows, any invoice or affidavit thereto, to the contrary notwithstanding:"

The advance being ten per centum on the entered value, the additional duty of twenty per cent. was levied under the 8th sec of act of July 30, 1846, which with the increased duty was paid by the importers, under the following protest:

"I this day pay to Philip Greeley, jr., collector of this port, on behalf of Messrs. B. Burgess & Sons, the sum of sixteen hundred forty-three dollars and $\frac{48}{100}$, more or less, claimed by him as due to the United States from them, on merchandise imported by them in the brig Eliza Burgess, under protest, with the intention of reclaiming the same or any part thereof, as may be found to have been illegally paid by them. Said sum is claimed by advance of value on the merchandise by the appraisers, thereby increasing the duties and assessing a penalty—all of which we protest against on the ground of fair valuation in the invoice, and that the goods were not fairly and faithfully examined by the appraisers. N. B. GIBBS."

The plaintiffs further offered to prove, under said protest, that the merchant appraisers did not examine or see any of the original packages of the merchandise in question, and only saw samples which had been taken on the 26th of April, 1850, from one in ten of the packages described in the invoice, and that such samples, so drawn and exposed to the air, would not afford a fair criterion by which to judge of the importation, and claimed the right to go behind the return of the said merchant appraisers, on the ground that they had not examined the sugars, as required by law, and to put it as a question of fact to the jury without alleging fraud.

The defendant objected to the admission of such evidence to go to the jury in the absence of fraud on the part of the appraisers, and claimed that their decision was in the nature of an award, and final under the statute, and not open under this protest. But this court ruled that the evidence was admissible, and that the plaintiffs might go to the jury on the facts, whether the examination made by the merchant appraisers was, in substance and effect, equivalent to an examination of one package in ten of the importation, and if it was not, that the appraisement was void. Whereupon the counsel for the defendant did then and there except to the said rulings of the court, and thereupon the jury returned a verdict for the plaintiffs, in the words following, to wit:

"The jury find that the said Philip Greeley, jr., in his lifetime, did promise the plaintiffs, in manner and form as they in their writ aforesaid have alleged, and assess damages in the sum of twenty-one hundred and twenty-seven dollars and sixty-eight cents."

"JOEL NILES, *Foreman.*"

And, inasmuch as the matters referred to, and the ruling of the honorable court and the admission of the evidence so objected to, do not appear by the record of the verdict aforesaid, the counsel on the part of the said defendant prayed the honorable court to set their seal to this bill of exceptions, containing the several matters proved, and rulings of the court thereon, and the exceptions thereto.

UNITED STATES OF AMERICA,
Mass. dist., ss:

I, Henry W. Fuller, clerk of the circuit court of the U. S. for the first circuit, Mass. dist., do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of B. Burgess and als. vs. Jas. C. Converse, adm'r, in said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Boston, in said district, this seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty five, and of the independence of the United States of America the eightieth.

[SEAL.]

H. W. FULLER, *Clerk,*
Cir. C. U. S. Mass. D.

3379.

SUPREME COURT OF THE UNITED STATES.

No. 142.

WILLIAM STAIRS AND AL., PLAINTIFFS,

vs.

CHARLES H. PEASLEE.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MASSACHUSETTS.

UNITED STATES OF AMERICA,
Massachusetts district:

May term, 1855.

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, before the honorable Benjamin R. Curtis, associate justice, and the honorable Peleg Sprague, district judge.

WILLIAM STAIRS and another
vs.
CHARLES H. PEASLEE.

This is an action for money had and received, brought by the plaintiffs, who are merchants, resident and doing business at Halifax, Nova Scotia, to recover of the defendant, the collector of customs for the port of Boston, money alleged to have been illegally exacted on payment of duties on fifty bags of cutch, shipped by the plaintiffs at Halifax, consigned to Messrs. Clark, Janes & Co., of Boston.

The invoice was dated at Halifax, November 10th, 1853, and the cutch was entered at the custom-house, Boston, on the 10th of the same month, at the invoice value.

The value of the cutch, as appraised by the United States appraisers, exceeded by ten per centum the invoice value; and the plaintiff appealed, and a re-appraisement was had by two merchant's appraisers,

and their appraisement also exceeded by ten per centum the invoice value; whereupon the defendant assessed a duty of ten per centum ad valorem on the appraised value, and also an additional duty or penalty of twenty per centum on the same value, under the 8th section of the Tariff act of July 30th, 1846.

It was proved that the cutch was the product of the East Indies only, and that Calcutta was the great market of the country of production. And it appeared on the trial that this fact was known to the appraisers when the appraisement was made. It was also proved that London and Liverpool were the principal markets of Great Britain, exclusive of India, for said article; and, so far as appraised at the trial, this cargo was the only one known to have been sold in, or exported from, Halifax.

It was also proved that the appraisers appraised the cutch at its market value in London and Liverpool, and not at Halifax or Calcutta, at the period of its exportation from the port of Halifax to the United States.

This case coming on to be tried, it occurred as a question:

1st. Whether the Tariff act of March 3d, 1851, repealed so much of all former laws as provided that merchandise, when imported from a country other than that of production or manufacture, should be appraised at the market value of similar articles at the principal markets of the country of production or manufacture, at the period of the exportation to the United States.

On which question the opinions of the judges were opposed.

2d. Whether, in estimating the dutiable value of the cutch, the appraisers should have taken the value at the market of Calcutta, or London and Liverpool, or Halifax, at the period of the exportation from Halifax.

On which question the opinions of the judges were also opposed.

3d. Whether, if the appraisements were legally made, the additional duty of twenty per centum, under the 8th section of the Tariff act of July 30th, 1846, was rightfully exacted by the defendant.

On which question the opinions of the judges were also opposed.

Whereupon, on motion of the plaintiffs, by their counsel, that the points on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court, to be finally decided:

It is ordered, that the foregoing statement of facts, which is made under the direction of the judges, be certified according to the request of the plaintiffs, by their counsel, and to the law in that case made and provided.

Attest: H. W. FULLER, *Clerk.*

UNITED STATES OF AMERICA,
Massachusetts district, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify, that the

foregoing is a true copy of record in the case—William Stairs vs. Charles H. Peaslee—in this court.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, at Boston, in said district, this twentieth day of November, in the year of our Lord eighteen hundred and fifty-five, and of the independence of the United States the year eightieth.

[SEAL.]

H. W. FULLER, *Clerk*.